

APPEAL NO. 032467
FILED NOVEMBER 6, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 18, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) has not had disability from April 17, 2001, through April 10, 2002; and that the claimant is not entitled to change doctors to Dr. K. The claimant appealed, disputing both determinations. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant testified that he was employed as a forklift driver for the employer and that he sustained an injury to his left ankle when a tire fell off of a stack of tires striking his left ankle. The claimant sought medical treatment from Dr. B. It was undisputed that Dr. B released the claimant to return to work and the record reflects that Dr. B certified the claimant reached maximum medical improvement on April 17, 2001, and assessed an impairment rating. An Employee's Request to Change Treating Doctors (TWCC-53) dated April 19, 2001, was in evidence in which the claimant requested that he be allowed to change treating doctors from Dr. B to Dr. K.

The hearing officer did not err in determining that the claimant is not entitled to change treating doctors. Section 408.022 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9(e) (Rule 126.9(e)) establish the criteria for selecting and changing a treating doctor. The hearing officer reviewed the evidence and determined that the claimant sought a change of treating doctors from Dr. B to Dr. K for an improper reason in that the reason he sought the change was to obtain a new medical report taking him off work. In view of the evidence presented, we cannot agree that the hearing officer erred in determining that the claimant is not entitled to change treating doctors.

Disability is a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's disability determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **FIDELITY AND GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge